

## PART II – CONTRACT CLAUSES

### SECTION I - CONTRACT CLAUSES

#### I.1 FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.arnet.gov/far/>

<http://professionals.pr.doe.gov/>

#### CLAUSES INCORPORATED BY REFERENCE

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.2	FAR 52.202-1	Definitions (JUL 2004) as modified by DEAR 952.202-1 (MAR 2002)	None
I.3	FAR 52.203-3	Gratuities (APR 1984)	None
I.4	FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)	None
I.5	FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)	None
I.6	FAR 52.203-7	Anti-Kickback Procedures (JUL 1995)	None
I.7	FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)	None
I.8	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)	None
I.9	FAR 52.203-12	Limitations on Payments to Influence Certain Federal Transactions (SEP 2007)	None
I.10	FAR 52.203-13	Contractor Code Of Business Ethics And Conduct (APR 2010)	None
I.11	FAR 52.204-4	Printed or Copied Double-Sided on Recycled Paper (AUG 2000)	None
I.12	FAR 52.204-7	Central Contractor Registration (APR 2008)	None
I.13	FAR 52.204-9	Personal Identity Verification of Contractor Personnel (SEP 2007)	None
I.14	FAR 52.204-10	Reporting Subcontract Awards (SEP 2007)	None
I.15	FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (SEP 2006)	None
I.16	FAR 52.215-2	Audit and Records – Negotiation (MAR 2009)	None
I.17	FAR 52.215-8	Order of Precedence – Uniform Contract Format (OCT 1997)	None

<b>Clause No.</b>	<b>FAR/DEAR Reference</b>	<b>Title</b>	<b>Fill-in Information (see FAR 52.104(d))</b>
I.18	FAR 52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications (OCT 1997)	None
I.19	FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (OCT 1997)	None
I.20	FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2004)	None
I.21	FAR 52.215-17	Waiver of Facilities Capital Cost of Money (OCT 1997)	None
I.22	FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)	None
I.23		Reserved	
I.24	FAR 52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JUL 2005)	(c) Offeror fill-in
I.25	FAR 52.219-8	Utilization of Small Business Concerns (MAY 2004)	None
I.26	FAR 52.219-9	Small Business Subcontracting Plan (APR 2008) – Alternate II (OCT 2001)	None
I.27	FAR 52.219-16	Liquidated Damages – Subcontracting Plan (JAN 1999)	None
I.28	FAR 52.219-25	Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (APR 2008)	None
I.29	FAR 52.219-28	Post-Award Small Business Program Representation (APR 2009)	(g) Contractor fill-in after award
I.30	FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)	None
I.31	FAR 52.222-2	Payment for Overtime Premiums (JUL 1990)	(a) The percentage specified in the Section H clause entitled, Overtime Control Plan
I.32	FAR 52.222-3	Convict Labor (JUN 2003)	None
I.33	FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (JUL 2005)	None
I.34	FAR 52.222-6	Davis-Bacon Act (JUL 2005)	None
I.35	FAR 52.222-7	Withholding of Funds (FEB 1988)	None
I.36	FAR 52.222-8	Payrolls and Basic Records (FEB 1988)	None
I.37	FAR 52.222-9	Apprentices and Trainees (JUL 2005)	None
I.38	FAR 52.222-10	Compliance with Copeland Act Requirements (FEB 1988)	None
I.39	FAR 52.222-11	Subcontracts (Labor Standards) (JUL 2005)	None
I.40	FAR 52.222-12	Contract Termination – Debarment (FEB 1988)	None
I.41	FAR 52.222-13	Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)	None
I.42	FAR 52.222-14	Disputes Concerning Labor Standards (FEB 1988)	None
I.43	FAR 52.222-15	Certification of Eligibility (FEB 1988)	None
I.44	FAR 52.222-16	Approval of Wage Rates (FEB 1988)	None
I.45	FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)	None
I.46	FAR 52.222-26	Equal Opportunity (MAR 2007)	None

<b>Clause No.</b>	<b>FAR/DEAR Reference</b>	<b>Title</b>	<b>Fill-in Information (see FAR 52.104(d))</b>
I.47	FAR 52.222-27	Affirmative Action Compliance Requirements for Construction (FEB 1999)	None
I.48	FAR 52.222-30	Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (DEC 2001)	None
I.49	FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)	None
I.50	FAR 52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)	None
I.51	FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)	None
I.52	FAR 52.222-41	Service Contract Act of 1965, As Amended (NOV 2007)	None
I.53	FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	None
I.54	FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	
I.55	FAR 52.223-3	Hazardous Material Identification and Material Safety Data (Jan 1997) – Alternate I (JUL 1995)	(b) Offeror fill-in
I.56	FAR 52.223-6	Drug Free Workplace (MAY 2001)	None
I.57	FAR 52.223-10	Waste Reduction Program as modified by DOE Acquisition Letter 2008-05 (APR 2008)	None
I.58	FAR 52.223-12	Refrigeration Equipment and Air Conditioners (MAY 1995)	None
I.59	FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)	None
I.60	FAR 52.224-1	Privacy Act Notification (APR 1984)	None
I.61	FAR 52.224-2	Privacy Act (APR 1984)	None
I.62	FAR 52.225-1	Buy American Act – Supplies (FEB 2009)	None
I.63	FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	None
I.64	FAR 52.227-1	Authorization and Consent (DEC 2007)	None
I.65	FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)	None
I.66	FAR 52.227-3	Patent Indemnity (APR 1984)	None
I.67	FAR 52.227-23	Rights to Proposal Data (Technical) (JUN 1987)	Offeror fill-in
I.68	FAR 52.228-7	Insurance – Liability to Third Persons (MAR 1996)	None
I.69	FAR 52.230-2	Cost Accounting Standards (OCT 2008)	None
I.70	FAR 52.230-6	Administration of Cost Accounting Standards (MAR 2008)	None
I.71	FAR 52.232-9	Limitation on Withholding of Payments (APR 1984)	None
I.72	FAR 52.232-17	Interest (OCT 2008)	None
I.73	FAR 52.232-22	Limitation of Funds (APR 1984)	None
I.74	FAR 52.232-23	Assignment of Claims (JAN 1986)	None
I.75	FAR 52.232-25	Prompt Payment (OCT 2008) – Alternate I (FEB 2002)	None
I.76	FAR 52.232-33	Payment of Electronic Funds Transfer – Central Contractor Registration (OCT 2003)	None
I.77	FAR 52.233-1	Disputes (JUL 2002) – Alternate I (DEC 1991)	None
I.78	FAR 52.233-3	Protest After Award (AUG 1996) – Alternate I (JUN 1985)	None
I.79	FAR 52.233-4	Applicable Law for Breach of Contract Claim (OCT 2004)	None

Clause No.	FAR/DEAR Reference	Title	Fill-in Information (see FAR 52.104(d))
I.80	FAR 52.234-4	Earned Value Management System (JUL 2006)	(g) Contracting Officer fill-in at award
I.81	FAR 52.237-2	Protection of Government Buildings, Equipment, and Vegetation (APR 1984)	None
I.82	FAR 52.237-3	Continuity of Services (JAN 1991)	None
I.83	FAR 52.239-1	Privacy or Security Safeguards (AUG 1996)	None
I.84	FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)	None
I.85	FAR 52.242-3	Penalties for Unallowable Costs (MAR 2001)	None
I.86	FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)	None
I.87	FAR 52.242-13	Bankruptcy (JUL 1995)	None
I.88	FAR 52.243-2	Changes – Cost Reimbursement (AUG 1987) – Alternate II (APR 1984), and Alternate III (APR 1984)	None
I.89	FAR 52.243-6	Change Order Accounting (APR 1984)	None
I.90	FAR 52.243-7	Notification of Changes (APR 1984)	(b) 10 (d) 30
I.91	FAR 52.244-2	Subcontracts (JUN 2007) – Alternate I (JUN 2007)	(e), (k) Contracting Officer fill-in at award
I.92	FAR 52.244-5	Competition in Subcontracting (DEC 1996)	None
I.93	FAR 52.244-6	Subcontracts for Commercial Items (DEC 2009)	None
I.94	FAR 52.245-1	Government Property (JUN 2007)	None
I.95	FAR 52.245-9	Use and Charges (JUN 2007)	None
I.96	FAR 52.246-25	Limitation of Liability – Services (FEB 1997)	None
I.97	FAR 52.247-1	Commercial Bill of Lading Notations (FEB 2006)	(a) Department of Energy (b) Department of Energy Contract No. <b>TBD</b> , the Contract Administration Office specified in the Section G Clause entitled, Contract Administration
I.98	FAR 52.247-68	Report of Shipment (REPSHIP) (FEB 2006)	None
I.99	FAR 52.248-1	Value Engineering (FEB 2000)	
I.100	FAR 52.249-6	Termination (Cost Reimbursement) (MAY 2004)	None
I.101	FAR 52.249-14	Excusable Delays (APR 1984)	None
I.102	FAR 52.251-1	Government Supply Sources (APR 1984)	None

Clause No.	FAR/DEAR Reference	Title	Fill-in Information (see FAR 52.104(d))
I.103	FAR 52.251-2	Interagency Fleet Management System Vehicles and Related Services (JAN 1991)	None
I.104	FAR 52.253-1	Computer Generated Forms (JAN 1991)	None
I.105	DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)	None
I.106	DEAR 952.204-2	Security Requirements (AUG 2009)	None
I.107	DEAR 952.204-70	Classification/Declassification (SEP 1997)	None
I.108	DEAR 952.204-75	Public Affairs (DEC 2000)	None
I.109	DEAR 952.204-77	Computer Security (AUG 2006)	None
I.110	DEAR 952.208-7	Tagging of Leased Vehicles (APR 1984)	None
I.111	DEAR 952.208-70	Printing (APR 1984)	None
I.112	DEAR 952.209-72	Organizational Conflicts of Interest (AUG 2009)	None
I.113	DEAR 952.215-70	Key Personnel (DEC 2000)	None
I.114	FAR 52.216-7/ DEAR 952.216-7	Allowable Cost and Payment (DEC 2002)	(a) (3) 15 <sup>th</sup>
I.115	DEAR 952.223-75	Preservation of Individual Occupational Radiation Exposure Records (APR 1984)	None
I.116	DEAR 952.223-76	Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (AUG 2009)	None
I.117	DEAR 952.227-11	Patent Rights-Retention by the Contractor (Short Form) (FEB 1995)	None
I.118	DEAR 952.227-13	Patent Rights-Acquisition by the Government (SEP 1997)	None
I.119	DEAR 952.227-82	Rights to Proposal Data (APR 1994)	Offeror fill-in
I.120	DEAR 952.227-84	Right to Request Patent Waiver (FEB 1998)	None
I.121	DEAR 952.231-71	Insurance -- Litigation and Claims (AUG 2009)	None
I.122	DEAR 952.247-70	Foreign Travel (AUG 2009)	None
I.123	DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (JUN 1996)	None
I.124	DEAR 952.251-70	Contractor Employee Travel Discounts (AUG 2009)	None
I.125	DEAR 970.5203-2	Performance Improvement and Collaboration (MAY 2006)	None
I.126	DEAR 970.5204-1	Counterintelligence (DEC 2000)	None
I.127	DEAR 970.5204-2	Laws, Regulations, and DOE Directives (DEC 2000)	See Section J, Attachment 2, Lists A and B
I.128	DEAR 970.5223-1	Integration of Environment, Safety, and Health Into Work Planning and Execution (DEC 2000)	None
I.129	DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites (DEC 2000)	None
I.130	DEAR 970.5227-1	Rights in Data – Facilities- (DEC 2000)	None
I.131	DEAR 970.5227-4	Authorization and Consent (AUG 2002)	None
I.132	DEAR 970.5229-1	State and Local Taxes (DEC 2000)	None
I.133	DEAR 970.5231-4	Preexisting Conditions (DEC 2000)	Contracting Officer fill-in at award

Clause No.	FAR/DEAR Reference	Title	Fill-in Information (see FAR 52.104(d))
I.134	DEAR 970.5232-5.	Liability with Respect to Cost Accounting Standards (DEC 2000)	None
I.135	DEAR 970.5244-1	Contractor Purchasing System (AUG 2009)	None

### **CLAUSES INCORPORATED IN FULL TEXT**

#### **I.136 FAR 52.215-19, NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

- (a) The Contractor shall make the following notifications in writing:
- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
  - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall—
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the ACO or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this Contract that meet the applicability requirement of FAR 15.408(k).

**I.137 FAR 52.222-42, STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

<b>Salaried Employee Class</b>	<b>Monetary Wage—Fringe Benefits</b>
Accounting Clerk I	15.74
Accounting Clerk II	16.37
Computer Systems Analyst I	29.39
Computer Systems Analyst II	31.93
Data Entry Operator I	14.72
Data Entry Operator II	15.74
Engineering Technician III	18.88
Engineering Technician IV	22.55
Environmental Technician II	18.88
Environmental Technician III	22.55
General Clerk I	14.72
General Clerk II	15.74
Information Management Technician	20.64
Lean Mailroom Supply Specialist	18.88
Maintenance Scheduler	16.37
Nursing Assistant III	15.74
Procurement Technician II	16.37
Procurement Technician III	18.88
QA Specialist	18.88
QA Technician	18.88
QA/QC Engineer	20.64
Quality Control Inspector	16.37
Rad Control Engineer III	20.59
Rad Control Engineer IV	24.67
Rad Control Technician III	18.88
Radiochemistry Technician	20.64

<b>Radiological Technologist</b>	<b>20.64</b>
<b>Regulatory Specialist</b>	<b>18.88</b>
<b>Safety Technician Specialist</b>	<b>18.88</b>
<b>Secretary I</b>	<b>16.37</b>
<b>Secretary II</b>	<b>18.88</b>
<b>Security Officer</b>	<b>20.64</b>
<b>Technical Instructor</b>	<b>22.55</b>
<b>Technical Instructor/Course Developer</b>	<b>26.80</b>

<b>Hourly Employee Class</b>	<b>Monetary Wage—Fringe Benefits</b>
<b>Electrician</b>	<b>29.25</b>
<b>Heavy Equipment Mechanic</b>	<b>29.25</b>
<b>Heavy Equipment Operator</b>	<b>29.25</b>
<b>HVAC Technician</b>	<b>29.25</b>
<b>Instrument Mechanic</b>	<b>29.25</b>
<b>Janitor</b>	<b>20.69</b>
<b>Laborer</b>	<b>20.69</b>
<b>Laborer, Grounds Maintenance</b>	<b>22.04</b>
<b>Millwright</b>	<b>29.25</b>
<b>Motor Vehicle Mechanic</b>	<b>29.25</b>
<b>Pipefitter</b>	<b>29.25</b>
<b>Plumber</b>	<b>28.44</b>
<b>Rigger</b>	<b>29.25</b>
<b>Shipping/Receiving Clerk</b>	<b>23.41</b>
<b>Truck Driver - Light</b>	<b>25.72</b>
<b>Truck Driver - Medium</b>	<b>26.67</b>
<b>Warehouse Specialist</b>	<b>24.74</b>
<b>Water Treatment Plant Operator</b>	<b>28.44</b>
<b>Welder</b>	<b>29.25</b>

**I.138 FAR 52.223-5, POLLUTION PREVENTION AND RIGHT TO KNOW INFORMATION AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008)**

- (a) Definitions. As used in this clause—  
 “Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Implementing

Instruction VIII of Executive Order 13423, Greening the Government through Leadership in Environmental Management.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

- (b) Executive Order 13423 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
  - (1) The emergency planning reporting requirements of Section 302 of EPCRA.
  - (2) The emergency notice requirements of Section 304 of EPCRA.
  - (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
  - (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
  - (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
  - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Implementing Instruction VIII of Executive Order 13423.

**I.139 FAR 52.223-9, ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (MAY 2008)**

(a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and
- (2) Submit this estimate to the Contracting Officer.

**I.140 FAR 52.223-10, WASTE REDUCTION PROGRAM AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008)**

- (a) Definitions. As used in this clause—
- “Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.
- “Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.
- “Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.
- (b) Consistent with the requirements of Section 3(a) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR Part 247).

**I.141 FAR 52.223-11, OZONE-DEPLETING SUBSTANCES (MAY 2001)**

- (a) Definition. “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—
- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
  - (2) Class II, including, but not limited to, hydrochlorofluorocarbons.
- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING: Contains (or manufactured with, if applicable) \*  
\_\_\_\_\_, a substance(s) which harm(s) public health and  
environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

**I.142 FAR 52.225-11, BUY AMERICAN ACT—CONSTRUCTION MATERIALS  
UNDER TRADE AGREEMENTS (AUG 2009)**

(a) *Definitions.* As used in this clause—

“Caribbean Basin country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark,

Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia);  
or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated county construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

none

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

- (D) Price;
  - (E) Time of delivery or availability;
  - (F) Location of the construction project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	.....	.....	.....
Domestic construction material	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Item 2:			
Foreign construction material	.....	.....	.....
Domestic construction material	.....	.....	.....
.....	.....	.....	.....

.....

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

**I.143 FAR 52.247-67, SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 2006)**

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—
  - (1) By the Contractor under a cost-reimbursement contract; and
  - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to—

General Services Administration  
Attn: FWA  
1800 F Street NW  
Washington, DC 20405

**I.144 FAR 52.252-6, AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

**I.145 DEAR 952.226-74, DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)**

(a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**I.146 DEAR 952.242-70, TECHNICAL DIRECTION (DEC 2000)**

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

(b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that—

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

- (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must—
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
  - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or
  - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

#### **I.147 DEAR 970.5204-3, ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)**

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.
- (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-

employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records. [70 FR 37010 Jun. 28, 2005]

(2) Confidential contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);

(3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of

contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

- (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the Contracting Officer);
- (2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or
- (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

**I.148 DEAR 970.5223-2, AFFIRMATIVE PROCUREMENT PROGRAM AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008)**

- (a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.
- (b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.
- (c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.
- (d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine

the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

- (e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

**I.149 DEAR 970.5223-5, DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008)**

When managing Government-owned vehicles for the Department of Energy, the Contractor will conduct operations relating to such vehicles in accordance with the goals and requirements of Executive Order 13423 and implementing guidance contained in the document entitled U.S. Department of Energy Compliance Strategy for Executive Order 13423 and future revisions of this compliance strategy that are identified in writing by the Contracting Officer. Section 8 of Executive Order 13423 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

**I.150 DEAR 970.5226-3, COMMUNITY COMMITMENT (DEC 2000)**

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.